or as payment to the account of wages. If the sum was paid to account of compensation under the Ordinance and a memorandum of agreement to that effect had been registered with the commissioner under section 28 thereof, then, of course, the respondent would have been barred from prosecuting a suit for damages in court by virtue of the provisions of section 41(1)(b). In the present case, however, it is clear from the memorandum of agreement itself that the sum of $292.72 was, in fact, paid as wages for a period of 49 days during which the respondent was under temporary disablement and that he agreed to accept the amount so paid as compensation. On these facts, it could be hardly said that the payment made was payment under the Workmen's Compensation Ordinance. The facts appear to be on all fours with the facts in *Lind* v. *Johnson* cited by the learned Lord President, with respect, I agree with him that this appeal should be dismissed with costs. I also agree, for the reasons stated by him, that the cross appeal should be dismissed with costs.

Appeal and cross-appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

WONG IT YONG v. LIM GAW TEONG & ANOR.

[F.C. (Azmi L.P., Suffian and MacIntyre FJ.J.) December 9, 1968]

[Johore Bahru—Federal Court Civil Appeal No. X23 of 1968]

Negligence — Highway — Vicarious liability — Negligence of driver — Car on test — Driver intending purchaser — Whether owner vicariously liable for negligence — Whether driver using car for his own purpose or also for the owner's purpose.

In this case one Daniel who wanted to buy a car asked to be allowed to test the car by using it for one or two days. The owner of the car agreed to let him do so. While driving the car Daniel collided with an oncoming vehicle and it was held that he had been negligent and damages were awarded in favour of the person injured. The question was whether the owner of the car was liable for the negligence of the driver. The learned trial judge held that the owner was vicariously liable for the driver's negligence. On appeal by the car owner,

Held, dismissing the appeal: (1) in this case it was to the advantage of the owner who wanted to sell the car, to allow the intending purchaser to test drive the car for one or two days and therefore when the accident happened the driver was driving the car partly, if not wholly, on the owner's business or for the owner's purposes;

(2) therefore the learned trial judge was correct in holding that the owner was vicariously liable.

Cases referred to:—

(1) *Hewitt* v. *Bonvin & Anor.* [1940] 1 K.B. 188, 191.

(2) *Ormrod's case* [1953] 2 All E.R. 753.

(3) *Norton* v. *Canadian Pacific Steamships Ltd.* [1961] 2 All E.R. 785.

(4) *Lee Chong* v. *Tan Kwee Low & Anor.* [1961] M.L.J. 98.

(5) *Turbervil* v. *Stamp* (1697) Comp. 459.

The following cases were also cited in argument: *Raja Singh* v. *Chin Fatt* [1936] M.L.J. 157, *Kho Kong Seng* v. *Mabbun* [1964] M.L.J. 58, *Hobson* v. *Bartram & Sons Ltd.* [1950] 1 All E.R. 412, 413 and *Smith* v. *General Motor Cab Co. Ltd.* [1911] A.C. 188.

FEDERAL COURT.

Lau Tiong Jin for the appellant.

D.A. Devadason for the respondents.

Cur. Adv. Vult.

Suffian F.J.: Mr. K.R. Daniel, the first defendant, was an officer in charge of the P.W.D. Workshop at Batu Pahat. He wanted to buy a car from Wong It Yong, the second defendant, a lady who helped her father, a motor spare parts dealer, in his business. They agreed on the price of car No. BR 9663. But before completing the deal the first defendant wanted to test the car by using it for one or two days. The second defendant agreed to let him do so.

On 16th June, 1959, at about 11 p.m. the first defendant drove the car towards Kluang. At 1¾ milestone he collided with an oncoming vehicle. The learned trial judge held that he had been negligent and awarded damages in favour of the driver and passenger of the oncoming vehicle.

The learned trial judge also held the second defendant vicariously liable for the first defendant's negligence.

The second defendant appealed.

The only question for decision in this appeal is — is the owner of the car liable on these facts for the first defendant's negligence?

The law applicable was stated by MacKinnon L.J. in *Hewitt* v. *Bonvin & Anor.*[1] as follows:—

"If *A* suffers damage by the wrongful act of *B*, and seeks to say that *C* is liable for that damage, he must establish that in doing the act *B* acted as the agent or servant of *C*. If he says that *B* was *C's* agent, he must further show that *C* authorised the act."

The facts in that case were that a son obtained from his mother, who had authority to grant it, permission to drive his father's motor car. The son wanted the car for his own purposes in order to drive two girl friends home from London to Wisbech. Neither the father nor the mother knew the girls and it was no concern of either of them that the girls should be driven to Wisbech. On the way back, through the negligent driving of the son, the car was upset and a friend who had accompanied the party to Wisbech, was killed. The trial judge held the father liable for the son's negligence, but the Court of Appeal held otherwise. MacKinnon

L.J. held that the father could not be liable because:—

"He [the son] was not employed to drive [the car] as his father's servant, and when the accident happened he was not doing any work of his father's. He was driving his own friend, *for his own purpose*, and the father had absolutely *no interest or concern* in what he was doing" (page 193).

Lord Du Parcq L.J., agreed that the father could not be held liable because the car was being used by the son for his own purposes. He said at page 196:—

". . . . If the girls concerned had been guests of the [father], or if it had been established that [the mother] had allowed her son to take the car because she felt that she and her husband were under some social or moral duty to convey them to their home, I should have thought that the finding of the learned judge ought not to be disturbed. In fact, ... neither [the father nor the mother] was responsible for the welfare of the girls, and I am not satisfied that [the mother] even approved of the journey, much less that she regarded its performance as a duty to be delegated to her son. The plaintiff has failed to show more than a bailment of the car by [the father] to the person responsible for driving it negligently."

It is to be noted that the father was held not liable because the car had not been used for his purposes.

Thirteen years later in *Ormrod's case* [2] the owner of a motor car was going to attend the Monte Carlo Motor Car Rally. He arranged for a friend to drive his (the owner's) car from Birkenhead to Monte Carlo. He was to carry a suitcase belonging to the owner of the car, was to make the journey in his own time and manner, was to visit friends in Bayeux (for which purposes he left Birkenhead earlier than he otherwise need have done), and was to arrive in Monte Carlo before the end of the rally. Thereafter he and the owner of the car were to go on holiday with the car in Switzerland. While on the direct route from Birkenhead to the English coast to cross to France, owing particularly to the negligence of the friend, the car collided with a bus which was damaged. It was held by the Court of Appeal that at the time of the accident the car was being used *wholly or partly for the owner's purposes*, and, therefore, the friend while driving it, was the agent of the owner, and, in so far as the friend was guilty of negligence, the owner was vicariously liable for it. Denning L.J. (as he then was) said at page 754:—

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner's consent, driving the car on the owner's business *or for the owner's purposes*. In the present case the driver was, by mutual arrangement driving the car partly for his own purposes *and partly for the owner's purposes*. The owner wanted the car driven to Monte Carlo; the driver wanted to go with his wife to Monte Carlo, and he intended to visit friends in Normandy on the way. On this account he started two or three days earlier than he would have done if he had been going solely for the owner's purposes. Counsel for the third party says that this should exempt the owner from liability for the driver's negligence, because the accident might never have happened if he had started later. He says that the owner would not have been liable for any negligence of the driver on the trip from Calais to Normandy, and he should not be liable for negligence due to the early start. I do not think that this argument is correct. The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friends, or anyone else. If it is being used *wholly or partly on the owner's business or for the owner's purposes*, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern; see *Hewitt* v. *Bonvin*." [1]

As regards agency, the learned trial judge (Devlin J., as he then was) in *Ormrod's case* [2] said:—

"It is clear that there must be something more than the granting of mere permission in order to create liability in the owner of a motor car for the negligence of the driver to whom it has been lent, but I do *not* think that it is necessary to show a legal contract of agency."

The reasoning in *Ormrod's case* [2] has been explained by Pearson L.J. at page 789 in a later decision of the Court of Appeal in *Norton* v. *Canadian Pacific Steamships Ltd.* [3] as follows:—

"The owner of a car, when he takes or sends it on a journey *for his own purposes*, owes a duty of care to other road users, and if any of them suffers damage from negligent driving of the car whether by the owner himself or by an agent to whom he has delegated the driving, the owner is liable."

This very point has come up for consideration before our own Court of Appeal in *Lee Chong* v. *Tan Kwee Low & Anor.* [4] There the owner of a car allowed his brother-in-law to borrow it with the knowledge that the car was to be lent to the second defendant for use for a period of ten days. While the second defendant was driving the car some days later, he was involved in a collision with the plaintiff. Reversing the learned trial judge, the Court of Appeal held that the owner had parted with his car unconditionally, retaining neither control nor the right to exercise any control over it, it was a clear instance of bailment, the owner had lent the car to a third person (the second defendant) to be used for purposes *in which the owner had no interest or concern* and accordingly the owner was not responsible for the second defendant's negligence. Thomson C.J. as he then was, said:—

"To this day what is probably the most helpful and compendious statement of the law on the point is to be found in the case of *Turbervil* v. *Stamp*: [5]

'If my servant doth any thing prejudicial to another, it shall bind me, where it may be presumed that he acts by my authority, *being about my business*.'

In view of the nature of some of the arguments which had been addressed to us in the present case, I hasten to add that in my view this statement is equally true if the word 'agent' be substituted for the word

'servant'. The important words are 'being about my business'.

The real difficulty, of course, is not in stating the law. The difficulty lies in the application of the law to the facts of any individual case."

Counsel for the second defendant argued that she had parted with her car unconditionally, retaining neither control nor the right to exercise any control over it and as this was a clear case of bailment, she should not be held liable for the first defendant's negligence.

Having given this matter anxious consideration, I regret that I do not agree. In my judgment, the learned trial judge was right in holding the second defendant vicariously liable for the first defendant's negligence. The second defendant wanted to sell her car, she had agreed the price with the intending purchaser (the first defendant) and it was to her advantage that she should allow him to test-drive the car for one or two days. When the accident happened, the first defendant was driving the car partly, if not wholly, on the owner's business or for the owner's purposes, the test used by Lord Denning in *Ormrod.*[2] Unlike the owner in *Hewitt* v. *Bonvin,*[1] the owner here had not lent the car to the first defendant to be used for purposes in which she had no interest or concern. She had every interest and every concern in persuading the first defendant to believe that the car was worth the price agreed and thus complete the deal.

I would therefore dismiss this appeal with costs.

Azmi L.P. and **MacIntyre F.J.** concurred.

Appeal dismissed.

Solicitors: *Mah & Kok; D.A. Devadason.*

BANKERS & TRADERS INSURANCE CO. LTD. v. ALLIED INSURANCE SERVICES

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Choor Singh J.) December 11, 1968]

[Singapore — Federal Court Civil Appeal No. Y28 of 1968]

Agency — Insurance agents — Appointment as — Whether there was consideration for giving guarantee and indemnity.

Insurance — Premiums collected by agents — Claim for money received by defendant for use of plaintiff.

The appellants (plaintiffs in the court below) claimed for the sum of $4,028.78 being money alleged to be payable by the respondents to the appellants for money received by the respondents for the use of the appellants, being balance due in respect of insurance premiums collected by the respondents for and on behalf of the appellants. In the alternative the appellants alleged that by a letter dated March 14, 1964, the respondents were appointed their agents and that in consideration thereof, *inter alia,* the respondents guaranteed in favour of the appellants the payment of all premiums due in respect of policies issued through the respondents' agency, and further that the sum of $4,028.78 was due to the appellants from the respondents in respect of such premiums.

Held, allowing the appeal: (1) on the facts of the case there was consideration for the giving of the guarantee or indemnity;

(2) an order for the necessary accounts and inquiries be taken by the registrar.

FEDERAL COURT.

Lee Boon Siong for the appellants.

J.B. Jeyaretnam for the respondents.

Cur. Adv. Vult.

Tan Ah Tah F.J. (delivering the judgment of the court): The plaintiffs' claim in this case is for the sum of $4,028.78 being money alleged to be payable by the defendants to the plaintiffs for money received by the defendants for the use of the plaintiffs, being the balance due in respect of insurance premiums collected by the defendants in Singapore and Malaya for and on behalf of the plaintiffs. In the alternative the plaintiffs allege that by a letter dated the 14th March 1964 the defendants were appointed insurance agents for the plaintiffs and that in consideration, *inter alia,* of their appointment as agents, the defendants guaranteed in favour of the plaintiffs the payment of all premiums due in respect of policies issued through the defendants' said agency, and further that the sum of $4,028.78 was due to the plaintiffs from the defendants in respect of such premiums.

At the hearing of the action in the court below, the learned trial judge was asked by counsel for both parties to decide the following issues:—

(1) Does the letter of appointment dated the 14th March 1964 contain a guarantee?

(2) If it does, was there sufficient consideration moving from the plaintiffs?

By his judgment the learned trial judge held that the letter of appointment dated the 14th March 1964 did not contain a guarantee by the defendants and even if there was a guarantee there was no valuable consideration for the guarantee. It is against this judgment that the plaintiffs have brought this appeal.

It is not disputed that by the letter dated the 14th March 1964 which was written by the plaintiffs to the defendants, the defendants were appointed insurance agents for the plaintiffs. The terms and conditions of the agency were set out in the said letter of appointment. One of the paragraphs (hereinafter referred to as "paragraph 3") of the letter reads as follows:—

"You may allow credit for a period not in excess of 90 days and upon the expiration of such credit period, the premiums, if not paid, by the insured will be your liability."